IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1094 of 2000
with
CIVIL REVISION APPLICATION No 499 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SONI SANTABEN DEVSHIBHAI LODHIYA

Versus

BHAGWANJI PRABHATBHAI MARDIYA

Appearance:

1. Civil Revision Application No. 1094 of 2000
MR ANIL C THAKORE for Petitioner
MS SEJAL K MANDAVIA for Respondent No. 1

2. Civil Revision ApplicationNo 499 of 2001
MR ANIL C THAKORE for Petitioner
MS SEJAL K MANDAVIA for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 19/06/2001

COMMON JUDGEMENT

1. Rule. So far as the Civil Revision Application No.1094 of 2000 is concerned. Ms.Sejal K. Mandavia, learned advocate appearing on behalf of the respondent waives service of rule.

2. So far as the Civil Revision Application No.499 of 2001 is concerned. Ms.Sejal K. Mandavia has appeared in response to service of rule on behalf of the respondent.

3. The above stated both the petitions being cognate were taken up for final hearing together by consent of parties and are being disposed of by this common order.

4. The petitioner of Civil Revision Application No.1094 of 2000 has challenged the order dated 29/5/2000 passed in Civil Misc. Application No.108 of 1998 by the learned Civil Judge (S.D.), Junagadh and has further prayed to direct the learned Civil Judge (S.D.), Junagadh to decide the case after hearing both the parties on merits. The petitioner has also prayed to quash and set aside the order dated 21/10/2000 passed by the learned Civil Judge (S.D.), Junagadh in the proceedings of Special Execution Petition No.30 of 1998. The petitioner prayed for interim relief to stay the execution, implementation and operation of the order dated 21/10/2000 passed in Special Execution Application No.30 of 1998 by the learned Civil Judge (S.D.), Junagadh pending the final hearing of the petition.

5. That vide order dated 8/11/2000 notice was issued to the respondent in the proceedings of Civil Revision Application No.1094 of 2000 and was made returnable on 4/12/2000. This Court (Coram : Mr.K.M.Mehta,J.) also granted ad-interim relief in terms of para-10(d) of the petition.

That vide order dated 10/4/2000, this Court (Coram : Ms.R.M.Doshit,J.) ordered that the impugned order passed in two separate proceedings could not be challenged in common Civil Revision Application, and as such the Civil Revision Application No.1094 of 2000 was entertained only as regard to challenge to the order dated 21/10/2000 made in Special Execution Application No.30 of 1998 and the liberty was granted to the petitioner to file a separate petition to challenge the order dated 29/9/2000 passed by learned Civil Judge (S.D.), Junagadh in Civil Misc. Application No.108 of 1998. That as a result, the petitioner has filed Civil Revision Application No.499 of 2001 to challenge the

order dated 29/9/2000 passed in the proceedings of Civil Misc. Application No.108 of 1998.

That vide order dated 3/5/2001, Rule was issued in Civil Revision application No.499 of 2001 and Notice for interim relief and hearing of rule was made returnable on 28/6/2001.

6. Heard learned advocates of both the parties.

The brief facts of the impugned proceedings for determination of above stated petitions could be stated as under ;

That the respondent in each of the petition Bhagvanji Prabhatbhai Maradia filed Special Civil Suit No.20 of 1997 against the petitioner in each of the matter Soni Shantaben Devahibhai Lodhiya on 10/2/1997 in the Court of 5th Joint Civil Judge (S.D.), Junagadh. That the summons was issued and duly served. The Court ordered to proceed further proceedings exparte and on 7/4/1998 passed a decree for specific performance of agreement to sale the immovable property dated 6/6/1996 executed by the petitioner/defendant in favour of the respondent/plaintiff. That the respondent preferred Special Execution Application No.30 of 1998 in the Court of learned Civil Judge (S.D.), Junagadh on 11/7/1998 to execute the said decree of specific performance of contract. That notice was ordered to be issued to the petitioner/judgment-debter vide order date 5/2/2000 on compliance of procedure prescribed vide Order-21, Rule-34(1) of Civil Procedure Code by the respondent/judgment-creditor.

That in the meanwhile, the petitioner through her Power of Attorney holder filed Civil Misc. Application No.108 of 1998 against the respondent in the Court of learned Civil Judge (S.D.), Juangadh on 14/10/1998 and prayed the following reliefs:-

(a) To set aside the decree and order passed in Special Civil Suit No.20 of 1997.

(b) The proceedings of Special Civil Suit No.20 of 1997 be ordered to be heard bi-partite.

(c) The proceedings of Special Execution Application No.30 of 1998 be stayed.

The petitioner through her Power of Attorney holder also filed an application to condone the delay of

22 days in filing the said Civil Misc. Application No.108 of 1998 on the ground that the petitioner had given Power of Attorney on 16/8/1998. Thereafter, notice issued in the proceedings of Special Execution Application No.30 of 1998 was served to the petitioner and the petitioner had given the same to the Power of Attorney holder to do the needful. That the Power of Attorney holder had come to Junagadh from Ajmer and before he could move any application in respect to Special Execution Application No.30 of 1998 or Special Civil Suit No.20 of 1997, he fell sick and on account of his sickness the Civil Misc. Application No.108 of 1998 could be filed after 22 days to the date of prescribed period of limitation, and as such, he prayed to condone the said delay in filing the Civil Misc. Application No.108 of 1998 to be granted.

That the trial Court heard the advocates of both the parties and vide impugned order dated 29/9/2000, rejected the prayer made on behalf of the petitioner to condone the delay and as a result, Civil Misc. Application No.108 of 1998 also stood rejected. That being aggrieved by the said order of rejection the petitioner has filed above stated petitions.

7. Perusal of the impugned order clearly suggests that the petitioner has failed to aver material facts which prevented the petitioner from appearing on a specified date. Not only that, bald statement of sickness of the Power of Attorney holder is pleaded by way of sufficient cause to condone the delay. The trial Court having construed the over all facts apparent on record has given a finding of fact that the petitioner/applicant has failed to establish the sufficient cause within the meaning of Section 5 of the Limitation Act. The trial Court has also observed that the certificate of sickness produced by the Power of Attorney holder is also insufficient and does not inspire confidence, as it only says that the Power of Attorney holder of the petitioner was advised rest for 20 days. That considering the date of making the application for certified copy of decree and the date of certificate, it could not be believed that on account of sickness the Power of Attorney holder of the petitioner could not attend the Court or engage the advocate to represent the case of the petitioner in the suit and consequent to that exparte decree is passed. That on scrutiny of record of the proceedings, the Court has observed that initially one advocate Mr.Desai appeared on behalf of the petitioner/defendant in the proceedings of Special Civil Suit No.20 of 1997 and filed undertaking to produce the

V.P. However, thereafter no V.P. has been filed and proceedings have proceeded exparte. The trial Court having considered the settled proposition of law has reluctantly rejected the application, as on facts the petitioner has miserably failed to explain the delay in filing the application for condonation of delay as also to prefer the application for setting aside the decree.

8. As a result, I do not find any reason to interfere with the impugned orders in exercise of the revisional powers. Hence, the Civil Revision Application No.1094 of 2000 as well as Civil Revision Application No.499 of 2001 stand disposed of as rejected. Rule is discharged in both the matters. No order as to costs. It is clarified that the interim relief granted in the proceedings of Civil Revision Application No.1094 of 2000 vide earlier order dated 8/11/2000 is hereby vacated.

(A.K.Trivedi,J.)

(vrpanchal)*